

CREDIT UNION MERGER MANUAL

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CREDIT UNION MERGER MANUAL

Introduction

This Merger Manual applies to mergers where a Washington State-chartered credit union (Washington credit union) is the survivor in the merger. That is, this manual applies where:

- A Washington credit union is merging into another Washington credit union; or
- A federal, out-of-state or foreign credit union is merging into a Washington credit union, and the Washington credit union is the continuing credit union.

The surviving credit union is referred to as the continuing credit union, and the credit union that does not continue is referred to as the merging credit union.

Please be aware: if the merging credit union is a federal, foreign or out-of-state credit union, other requirements or restrictions may apply.

Fiduciary duties of boards

The board of directors of each credit union contemplating a merger should carefully consider all material aspects of the merger, including both the positive and negative effects that the merger could have on the members of the credit union. Before the merger is completed, the boards should assure themselves that their credit union has done an adequate due diligence of the other credit union.

Two-thirds of the board members for a “merging” Washington state chartered credit union must approve the merger plan. The Division of Credit Unions expects that management of a “merging” state chartered credit union will contact the Division at least five business days prior to the Board of Directors’ vote on the merger. A Division representative may attend the board meeting in which the vote will be held. (RCW 31.12.633)

Merger agreement

The credit unions should reach an understanding as to all material aspects of the merger. Typically, the two credit unions will enter into a merger agreement. Credit unions should consult counsel before entering into a merger agreement. We discourage credit unions from using the NCUA Merger Agreement (NCUA form 6304) for this purpose because, by its terms, the form should not be signed until the merger has been completed. However, credit unions will need to submit a completed 6304 as part of the application process.

Major steps to a merger

The major steps to merge credit unions are as follows (not necessarily in this exact order):

- The boards adopt a merger plan

- The continuing credit union determines whether filing under the federal Hart-Scott-Rodino Act (HSRA) is necessary. If the merger is subject to HSRA, the continuing credit union files pre-merger notification with the Federal Trade Commission
- The continuing credit union applies to, and obtains approval from, the Division of Credit Unions for the merger proposal
- The continuing credit union applies to, and obtains approval from, NCUA Region VI for the merger proposal
- The credit unions notify their bonding companies of the merger proposal
- The credit unions obtain member approval for the merger proposal
- The credit unions file Articles of Merger with the Division which, in turn, files them with the Secretary of State, giving effect to the merger
- The credit unions sign and submit the Merger Agreement (NCUA form 6304) to DCU and NCUA Region VI
- The credit unions submit final reports to DCU and NCUA Region VI
- The NCUA cancels the charter of the disappearing credit union, if federally-chartered

Applicable Washington and federal statutes and rules

State of Washington. Credit unions intending to merge must comply with:

- RCW 31.12.461, if both credit unions are Washington credit unions; or
- RCW 31.12.467, if a federal, out-of-state or foreign credit union is merging into a Washington credit union, and the Washington credit union is the survivor.

Federal – Federal Credit Union Act. The credit unions must also comply with NCUA rules at 12 C.F.R. 741.208 and 12 C.F.R. Part 708b, Subpart A.

Federal – Hart Scott Rodino Act. In addition, the merger may be subject to the federal Hart-Scott-Rodino Act (HSRA). The HSRA requires credit unions to file a pre-merger notification and pay a substantial filing fee (upwards of \$45,000) with the Federal Trade Commission at least 30 days prior to the merger. The purpose of the filing is to give the FTC an opportunity to review the proposed merger to determine if it would violate federal antitrust laws.

The credit unions bear the responsibility to determine whether or not filing under the HSRA is required.

We will assume the HSRA applies if:

1. The disappearing credit union has more than \$200 million in assets; or
2. a. The disappearing credit union has at least \$50 million in assets; and
b. The continuing credit union has at least \$100 million in assets (before the merger).

Asset figures should be based on the most recent month-end balance sheets of the credit unions.

If either of these circumstances exist, or if we notify you that we have other reasons to believe that the merger is subject to the HSRA:

- We will assume the Act applies, unless the continuing credit union provides a legal opinion that it does not; and
- If the credit union does not provide such an opinion, the credit union must provide written representation that it has complied with the HSRA and provide the date that the waiting period under the HSRA expires.

The Articles of Merger will not be filed and the merger will not be legally effective until any applicable HSRA waiting period has expired.

Submitting a merger application to the Division and NCUA

After the boards have approved the plan of merger, the continuing credit union may submit a merger application to the Division. The merger application should include the items and information listed in the attached Merger Application Checklist.

The merger application should be sent to the NCUA at the same time it is sent to the Division.

For a credit union to obtain approval from the Division or NCUA, an on-site examination may be required by the Division or the NCUA. Therefore, credit unions should allow at least 60 days after filing the merger application to obtain Division and NCUA approvals. More time may be needed if an examination requires corrective actions prior to the merger.

The Division will be in contact with the NCUA. If an examination is required, the Division will call the credit union contact person.

Due Diligence Review

The management of the continuing credit union is required to have a due diligence review performed on the merging credit union's operations and to perform an evaluation of the merging credit union's financial condition. A due diligence review is a comprehensive in-depth review of the merging credit union's operations, which includes an analysis of how the continuing credit unions operations and financial condition will be affected by the merger. This requirement may be waived by the Division of Credit Unions. The due diligence review will be performed prior to the merger date. The complexity of the due diligence review will be dependent upon many factors, such as the current financial condition of the merging credit union, the complexity of the merging credit union's balance sheet, notable problems stated in recent NCUA or Division exam reports or material conditions or problems listed in an audit report. In addition, the presence of contingent liabilities would warrant additional review. At a minimum, the due diligence review should include a review of the credit union's operations, loan portfolio, investments, accounting system and financial records. The loan review must satisfactorily review the problem and collection loan area, as well as whether the Allowance for Loan and Lease Losses account is adequately funded.

Merger forms

NCUA has a comprehensive Credit Union Merger Manual that is very helpful in planning the work needed to complete a merger in a timely manner. The Manual includes necessary forms. However,

please be aware that most of the substantive and procedural requirements in the Manual do not apply where a state-chartered credit union is the continuing credit union.

Credit unions may order the Manual by calling or writing to:

Region VI
National Credit Union Administration
2300 Clayton Road, Suite 1350
Concord, CA 94520
(925) 363-6200

The Manual is also available on the NCUA website at www.ncua.gov under Reference Information and CU Merger Manual.

The Division will accept NCUA merger forms, assuming they are completed and tailored appropriately to reflect that the continuing credit union is state-chartered, etc. We have referenced NCUA form numbers where applicable in the attached Checklist. If you wish to substantively revise the NCUA forms, or create your own merger forms, you will need prior approval from the Division and NCUA.

Membership Approval

The disappearing credit union must receive member approval of the merger. The credit union may take the merger proposal to a vote of members after receiving the Division and NCUA's approval of the merger.

A disappearing Washington credit union may take the merger proposal to members at a regular or special meeting of members. Typically, the vote is taken at a special meeting. The credit unions must comply with applicable statutory and bylaw provisions in notifying members of the meeting. For example, see RCW 31.12.195 concerning notice of special meetings. Members of the credit union may vote by mail ballot, if permitted by the credit union's bylaws. The merger proposal must be approved by two-thirds of the members of the disappearing credit union who vote on the proposal. In addition to other requirements, the merger proposal given to membership must include the following:

- Disclose what branches and offices of the merging credit union will remain open after the merger;
- Disclose whether any employees will lose their positions because of the merger; and
- Disclose any discontinuance of services or products that will occur to the merging credit union's membership as a result of the merger;
- Disclose any compensation, retirement or severance benefits that will be paid to senior management as a result of the merger and state the amounts; and
- Disclose all other merger terms that could be viewed as adverse by a credit union member.

If the disappearing credit union is a federal, foreign or out-of-state credit union, other requirements or restrictions may apply.

Completion of merger

When the credit unions have obtained written approvals from both the Division and the NCUA, and the required approval from members, and all regulatory waiting periods have expired (such as the 30 day pre-merger filing under the HSRA, if applicable), the merger may be completed. The merger is completed on the date that the Division files the continuing credit union's Articles of Merger with the Secretary of State, or on a subsequent date indicated in the Articles but no later than 90 days after the filing.

Division contact

For information on merger applications, please call or write to:

Doug Lacy-Roberts, Senior Examiner
Division of Credit Unions
Post Office Box 41200
Olympia, WA 98504-1200
(360) 902-0507
Email: dlacyroberts@dfi.wa.gov

NCUA Form 6301

Merger Application Checklist (slightly revised)

Except to the extent noted, the continuing credit union should submit each item to both the Division and NCUA Region VI:

1. Cover letter, addressing:
 - A detailed explanation of the reason for the merger.
 - One primary contact person at each credit union, with mailing address, e-mail address, and phone number.
 - Designation of the continuing credit union and where its main office will be located after the merger.
 - What new services and products will the merging credit union's members have access to after the merger?
 - Are there any branch offices, products and services that the merging credit union's members will not have access to after the merger? If so, how will the continuing credit union discontinue these products or services, and/or a branch office?
 - The continuing credit union's plans for the disappearing credit union's office(s).
 - Which board members (if any) will be added to the continuing credit union's board?
 - Whether the merging credit union has an executive contract that will require a payout to an existing manager or senior staff member. This would include retirement benefits. We request this information, because these costs can significantly increase the cost of a merger.
 - What employment arrangements (if any) will be provided to employees of the disappearing credit union, including the manager and senior management employees?
 - Any capital rebate to members and the remaining net worth amount.
 - Explanation of any proposed share adjustment or justification for no share adjustment.
 - Explanation of any provisions for reserves, undivided earnings, or dividends.
 - Proposed effective date of the merger.
 - Explanation of any changes to insurance, such as life savings and insurance of member accounts.
 - State any compensation, retirement or severance benefits that will be paid to senior management as a result of the merger and state the amounts.
2. If the merger exceeds the HSRA thresholds, a legal opinion satisfactory to the Division that the HSRA does not apply, or a copy of the Federal Trade Commission pre-merger notification and a statement representing the date that the waiting period under the HSRA expires.
3. If the disappearing credit union is federally chartered, a copy of its latest NCUA exam report.
4. Copy of notice to the bonding company as to the proposed merger.
5. Copy of the required notice to creditors, and any provision for paying creditors outside the normal course of business.

6. Current financial statements for each credit union.
7. Current delinquent loan summary for each credit union.
8. Current analysis of the adequacy of the Allowance for Loan and Lease Losses for each credit union.
9. Combined Statement of Financial Condition.
10. An affidavit from the newspaper or certification that creditors were provided notice for three consecutive weeks as required by RCW 31.12.461(3).
11. Copies of the field of membership of each credit union.
12. DCU forms WCU 4 and WCU 4a, merger resolution of the board of directors of each credit union.
13. NCUA form 6311, Probable Asset/Share Ratio Computation Form for the continuing credit union.
14. NCUA form 6312, Probable Asset/Share Ratio Computation Form for the disappearing credit union.
15. NCUA form 6305A, Notice of Special Meeting of the Members on Proposal to Merge. Credit unions must be careful to adequately disclose all relevant aspects of the merger. For example, if the continuing credit union has agreed to an employment or consulting agreement for the manager of the disappearing credit union, the relevant details of the agreement should be disclosed.
16. NCUA form 6306A, Ballot for Merger Proposal.
17. NCUA form 6308A, Certification of Vote on Merger Proposal.
18. NCUA form 6304, Merger Agreement.
19. DCU form, Articles of Merger.
20. NCUA form 6309, Certification of Completion of Merger.
21. Copy of notice to the bonding company of the effective date of the merger.
22. To the Division only, for filing the Articles of Merger with the Washington Secretary of State, the continuing credit union's check payable to the Secretary of State in the amount of \$60:

NCUA Form 6305A

Instructions for NCUA 6305A (revised for state chartered credit unions): If the merging credit union is a Washington state chartered credit union, then not more than 30 nor less than 20 days before the date of the vote, the merging credit union must provide its members (a) advance notice of a special meeting to vote on a proposed merger and (b) a copy of the merger ballot. The merging credit union should conduct the membership vote only after the Division of Credit Unions approves the proposed merger.

If the merging credit union is a federally chartered credit union, then different instructions may apply.

* * * * *

Notice of Special Meeting of the Members on Proposal to Merge

_____ Credit Union
(Merging)

You are encouraged to attend a special meeting of your credit union at

_____ on
(address)

_____, 20__, at __ o'clock __.m. The meeting has two purposes:

1. To consider and act upon a proposal to merge our credit union with _____ Credit Union, the continuing credit union. Our credit union will transfer all its assets and liabilities to the continuing credit union. As a member of our credit union, you will become a member of the continuing credit union. On the effective date of the merger, you will receive shares in the continuing credit union for the shares you own now in our credit union.
2. To approve the action of the Board of Directors of our credit union in authorizing the officers of the credit union, subject to member approval, to carry out the proposed merger.

The directors of the participating credit unions carefully analyzed the assets and liabilities of the participating credit unions and appraised each credit union's share values. The appraisal

of the share values appears on the attached individual and consolidated financial statements of the participating credit unions.

The directors of the participating credit unions have concluded that the proposed merger is desirable for the following reasons:

The Board of Directors of our credit union believes that the merger should include/not include an adjustment in shares for the following reasons:

The main office of the continuing credit union will be as follows:

The branch office(s) of the continuing credit union will be as follows:

The merger must have the approval of a majority of members of the credit union who vote on the proposal.

Enclosed with this Notice of Special Meeting is a Ballot for Merger Proposal. If you cannot attend the meeting, please complete the ballot and return it to the credit union office at _____ by no later than _____, 20___. To be counted, your ballot must reach us by the date and time announced for the meeting.

BY ORDER OF THE BOARD OF DIRECTORS:

Board Presiding Officer

Date

NCUA Form 6306A

Instructions for NCUA 6306A (revised for state chartered credit unions): If the merging credit union is a Washington state chartered credit union, then not more than 30 nor less than 20 days before the date of the vote, the merging credit union must provide its members(a) advance notice of a special meeting to vote on a proposed merger and (b) a copy of the merger ballot. The merging credit union should conduct the membership vote only after the Division of Credit Unions approves the proposed merger.

If the merging credit union is a federally chartered credit union, then different instructions may apply.

* * * * *

Ballot for Merger Proposal

Name of Member: _____ Account Number: _____

Your credit union must receive this ballot by _____ (date for vote). Please mail or bring it to:

(Insert credit union address)

I have read the Notice of Special Meeting for the members of _____ Credit Union. The meeting will be held on the above date to consider and act upon the merger proposal described in the notice. I vote on the proposal as follows (check one box):

- ☐ Approve the proposed merger and authorize the Board of Directors to take all necessary action to accomplish the merger.
- ☐ Do not approve the proposed merger.

Signed: _____
Member's Name

Date: _____

NCUA Form 6308A

Instructions for NCUA 6308A (revised for state chartered credit unions): If the merging credit union is a Washington State chartered credit union then within 10 days after the membership vote, the merging credit union must complete this form and mail it to the Division of Credit Unions.

* * * * *

Certification of Vote on Merger Proposal of the _____ Credit Union (Merging)

We, the undersigned officers of the _____ Credit Union, certify that our Board of Directors completed the following actions:

1. At a meeting on _____, 20__, adopted a resolution approving the merger of our credit union with _____ Credit Union (continuing credit union).
2. Not more than 30 nor less than 20 days before the date of the vote, delivered in person or mailed to every member of our credit union (a) a copy of the Notice of Special Meeting of the Members and Ballot for Merger Proposal, as approved by the Division of Credit Unions, and (b) a copy of the merger plan announced in the Notice.
3. Conducted a special meeting of the members of our credit union at the time and place announced in the Notice to consider and act upon the proposed merger.
4. At the special meeting, explained the merger proposal and any changes in federally insured status to the members present.
5. Conducted the membership vote at the special meeting. A majority of the voting members of our credit union voted in favor of the merger as follows:
____ Number of members present at the special meeting
____ Number of members present who voted in favor of the merger
____ Number of members present who voted against the merger
____ Number of additional written ballots in favor of the merger
____ Number of additional written ballots opposed to the merger
6. Recorded in the meeting minutes the action of the members at the special meeting.

This certification signed the _____ day of _____, 20__

Board Presiding Officer

Secretary

NCUA Form 6309

Instructions for NCUA 6309: Within 30 days after the effective date of the merger, the continuing credit union must complete this form and mail it to the NCUA regional director with the documents requested on the form. Additionally, a copy must be sent to the Division of Credit Unions.

* * * * *

Certification of Completion of Merger into _____ Credit Union

(Continuing)

We, the undersigned officers of the above-named credit union, certify to the National Credit Union Administration as follows:

1. The merger of our credit union with _____ Credit Union was completed as of _____, 20__ (date of the executed merger agreement) according to the terms and plan approved by this Board of Directors by a resolution adopted at the meeting held on _____, 20__. We previously provided a certified copy of the resolution to the National Credit Union Administration.
2. We completed all required steps for the merger and transferred the merging credit union's assets.

Attached to this certification are the following documents:

1. Financial reports for each credit union immediately before the completion of the merger.
2. A consolidated financial report for the continuing credit union immediately after the completion of the merger.
3. The charter of the merging federal credit union (if available).
4. The insurance certificate for the merging federally insured credit union (if available).
5. A copy of the executed merger agreement, Form NCUA 6304.

This certification signed the _____ day of _____, 20__.

Board Presiding Officer

Treasurer

NCUA Form 6304

Instructions for NCUA 6304: At the completion of the merger, officials of the merging and continuing credit unions must complete this agreement, have it notarized, and the continuing credit union should retain the original document. Send one copy of the executed form to the NCUA Regional Director, and one copy to the Division of Credit Unions. The date you sign this document is the effective date of the merger.

* * * * *

Merger Agreement

This agreement, made and entered into this _____ day of _____, 20__, by and between _____ Credit Union (continuing credit union) and _____ Credit Union (merging credit union).

The continuing credit union and the merging credit union agree to the following terms:

1. The merging credit union will transfer to the continuing credit union all of its assets, rights, and property.
2. The continuing credit union will assume and pay all liabilities of the merging credit union. In addition, the continuing credit union will issue all members of the merging credit union the same amount of shares they currently own in the merging credit union, subject to the following share adjustments (if any):

_____ (continuing) Credit Union

by: _____
Board Presiding Officer Treasurer

_____ (merging) Credit Union

by: _____
Board Presiding Officer Treasurer

State of _____

County of _____

Before me a Notary Public (or other authorized officer) appeared the above named _____ and _____, Board Presiding Officer and Treasurer of _____ Credit Union, who being personally known to me as (or proved by the oath of credible witnesses to be) the persons who executed the annexed instrument acknowledged the same to be their free act and deed and in their respective capacities the free act and deed of said credit union.

(SEAL)

Notary Public

My commission expires _____, 20__.

State of _____

County of _____

Before me a Notary Public (or other authorized officer) appeared the above named _____ and _____, Board Presiding Officer and Treasurer of _____ Credit Union, who being personally known to me as (or proved by the oath of credible witnesses to be) the persons who executed the annexed instrument acknowledged the same to be their free act and deed and in their respective capacities the free act and deed of said credit union.

(SEAL)

Notary Public

My commission expires _____, 20__.

State of _____

County of _____

Instructions for NCUA Forms 6311 and 6312: These probable asset/share ratio computations are required for a complete merger package. To help you with the share analysis, you can download the spreadsheets from our web site at [www.ncua.gov/reference information/CU Merger Manual](http://www.ncua.gov/reference%20information/CU%20Merger%20Manual) or use the form listed below.

Probable Asset/Share Ratio Computation Instructions

The Probable Asset/Share Ratio (PAS) reflects the relative worth of \$1 of shares in the credit union, assuming it will be an on-going concern. The ratio is computed by dividing the net value of assets by the credit union's total shares.

ADDITIONS:

Cash is valued at book less any known potential losses.

Loans are valued at book less classified loans.

Investments are valued at book value less any known losses. However, if a long-term investment is likely to be liquidated prior to maturity, it is valued at current market value.

Fixed Assets are valued at book, except when major fixed assets are not in use or are in the process of being sold. In these instances, the asset is valued at its probable market value.

Other Assets are valued at the most realistic value to the credit union, usually not to exceed book value.

DEDUCTIONS:

Notes Payable are valued at book.

Accounts Payable are valued at book.

Other Liabilities are valued at book.

Contingent and/or Unrecorded Liabilities are valued at the most realistic known value. This item should include any unrecorded dividends not accrued for the accounting period.

Subsidiary Ledger Differences are deducted if the credit union is likely to suffer a loss due to the problem.

Other Losses includes any other known losses. Do not include deficits in undivided earnings or net losses because they have already reduced assets if properly recorded.

PROBABLE ASSET/SHARE RATIO

	Book Value	Market Value
<u>ADDITIONS:</u>		
Cash		
Loans		
Investments		
Fixed Assets		
Other Assets		
Total (A)		
<u>DEDUCTIONS:</u>		
Notes Payable		
Accounts Payable		
Other Recorded Liabilities		
Contingent and/or Unrecorded Liabilities		
Subsidiary Ledger Differences		
(Losses)		
Other Losses		
Total (B)		
Net Value of Assets (A-B)		
Total Shares		
Probable Asset/Share Ratio		

DCU FORM WCU 3a
CERTIFICATE OF FINANCIAL STATEMENTS

(merging credit union)

(as of date)

STATE OF WASHINGTON)
)
) ss
)
COUNTY OF _____)

We, the undersigned, each for themselves, do hereby certify that:

1. The attached financial statements are a true statement of the condition of the credit union named;
2. All the assets and liabilities are shown under their proper designation;

Said credit union has no liabilities of any character, disclosed or undisclosed, not shown on this statement;

DATED _____, 20____

PRESIDENT/CEO and/or BOARD CHAIR

DCU FORM WCU 3b
CERTIFICATE OF FINANCIAL STATEMENTS

(continuing credit union)

(as of date)

STATE OF WASHINGTON)
)
) ss
)
COUNTY OF _____)

We, the undersigned, each for themselves, do hereby certify that:

1. The attached financial statements are a true statement of the condition of the credit union named; and,
2. All the assets and liabilities are shown under their proper designation.

DATED _____, 20____

PRESIDENT and/or BOARD CHAIR

DCU Form WCU 4

Merger Resolution of the Board of Directors

Credit Union

(Continuing)

Resolution

The Board of Directors of the above-named credit union (Continuing Credit Union) believes that the Continuing Credit Union should merge with

_____ Credit Union (Merging Credit Union). The Continuing Credit Union will assume the Merging Credit Union's shares and liabilities. The Merging Credit Union will transfer to the Continuing Credit Union all of its assets, rights, and property. All members of the Merging Credit Union will receive shares or deposits (as appropriate) in the Continuing Credit Union, which will stay in business under its present charter.

The Board Presiding Officer and Secretary of the Continuing Credit Union are authorized to:

- . Seek approval of the merger by the Division of Credit Unions (DCU) and the National Credit Union Administration (NCUA).
- . Execute and deliver the merger agreement.
- . Execute all agreements and other papers required to complete the merger.

Certification

We certify to the DCU and the National Credit Union Administration that the foregoing is a full, true, and correct copy of a resolution adopted by the Board of Directors of the Continuing Credit Union at a meeting duly held under our bylaws on

_____, 20____. A quorum was present and voted. The resolution is duly recorded in the minutes of the meeting and is still in full force and effect.

Board Presiding Officer

Date

Secretary

Date

DCU Form WCU 4a

Merger Resolution of the Board of Directors

_____ **Credit Union**
(Merging)

Resolution

The Board of Directors of the above-named credit union (Merging Credit Union) believes that the Merging Credit Union should merge with

_____ Credit Union (Continuing Credit Union). The Continuing Credit Union will assume the Merging Credit Union's shares and liabilities. The Merging Credit Union will transfer to the Continuing Credit Union all of its assets, rights, and property. All members of the Merging Credit Union will receive shares or deposits (as appropriate) in the Continuing Credit Union, which will stay in business under its present charter.

The Board Presiding Officer and Secretary of the Merging Credit Union are authorized to:

- . Seek approval of the merger by the Division of Credit Unions (DCU) and the National Credit Union Administration (NCUA).
- . Execute and deliver the merger agreement.
- . Execute all agreements and other papers required to complete the merger.

Certification

We certify to the DCU and the National Credit Union Administration that the foregoing is a full, true, and correct copy of a resolution adopted by the Board of Directors of the Merging Credit Union at a meeting duly held under our bylaws on

_____, 20____. A quorum was present and voted. The resolution is duly recorded in the minutes of the meeting and is still in full force and effect.

Board Presiding Officer

Date

Board Secretary

Date

Articles of Merger

of a State or Federal Credit Union
into a Washington State-chartered Credit Union

UBI # of Merging Credit Union (if applicable) Submit original and one copy.
Fee: \$60

Phone # of Merging Credit Union

To Credit Unions: Please type or print in black ink.

To Secretary of State: If item 2A below is checked, please remove the Merging Credit Union from the active list and place it on the inactive list.

1. These Articles of Merger concern the merger of
_____ (Merging Credit Union) into
_____ (Continuing Credit Union).

2. The Merging Credit Union is [check one]:

_____ A. Operating under Chapter 31.12 RCW;

_____ B. Operating under the Federal Credit Union Act; or

_____ C. Operating under the law of the State of
_____.

3. The Continuing Credit Union is operating under Chapter 31.12 RCW and its UBI number is:

_____.

4. The boards of directors and members of the Merging Credit Union and Continuing Credit Union have given all required approvals of the merger, in accordance with applicable law.

5. The merger has received all necessary regulatory approvals and all applicable regulatory waiting periods have expired.

Articles of Merger of Credit Unions
Page Two

6. The merger will be effective [check one]:

_____ A. As of the close of business on the date this Articles of Merger document is filed with the Secretary of State; or

_____ B. At the time and on the date specified below, which in no event is more than 90 days after the date this Articles of Merger document is filed with the Secretary of State:

_____.

7. If item 2A above is checked, the Merging Credit Union requests that the Secretary of State remove the Merging Credit Union from the list of active corporations and place it on the inactive list, as of the effective date of the merger.

8. Each of the undersigned Officers hereby represents to the best of his or her knowledge that this document is true and correct.

Signature of Merging Credit Union Officer, Title Date

Signature of Continuing Credit Union Officer, Title Date

Approved for filing:

Assistant Director, Division of Credit Unions
Department of Financial Institutions

Date



DCU BULLETIN

Division of Credit Unions

Washington State Department of Financial Institutions

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Effective Date of Credit Union Mergers

Overview

If the surviving credit union in a merger is a Washington State-chartered credit union, when does the merger become legally effective? The Washington State Credit Union Act (Credit Union Act) is unclear on this point.

The effective date can impact whether another Division assessment is due and other significant matters. We believe that there would be value in providing more certainty for credit unions on the effective date of mergers.

Analysis

The Credit Union Act addresses certain aspects of mergers. RCW 31.12.461, .464(4), 467(3). However, the CU Act does not specify when a credit union merger becomes effective.

The NCUA form Merger Agreement (NCUA 6304) - that most credit unions use - provides that the merger will be effective on the date entered on the first line of the Agreement. The instructions on the second page of the form direct credit unions

not to fill in the date or sign the Agreement until the merger is completed.

In analyzing this issue, we reviewed the parallel provisions under the Washington Business Corporation Act. The Business Corporation Act provides that a merger becomes effective when articles of merger are filed with the Washington Secretary of State, or at a later date as specified in the articles (not to exceed 90 days). RCW 23B.11.050, 23B.01.230. The rationale appears to be that the merger takes effect on the date provided in the public record maintained by the Secretary of State. In the credit union context, credit unions do not file articles of merger, but do file the signed merger agreement with the Secretary of State (through the Division).

Conclusion

In the absence of direction in the Credit Union Act, the Division has determined to adopt the rationale of the Business Corporation Act - that mergers become effective as provided in the public record maintained by the Secretary of State. Accordingly, credit union mergers will become legally effective on the date the Division files the merger agreement with the Secretary of State, or a later date as specified in the agreement itself (not to exceed 90 days).

Coordination with the Division

The credit union submitting the merger agreement to the Division should contact the Division prior to submission to coordinate the date inserted by the credit union in the first line of the agreement. The date should be the future date that the merging credit unions want the merger to take legal effect - either the date the Division will file the merger agreement with the Secretary of State, or a later date (not to exceed 90 days). The credit union should make sure that the merger agreement is received by the Division at least 5 business days before the date that the Division intends to file the agreement with the Secretary of State.

Merger of books

We have observed that in many cases the books of the credit unions are merged before the credit unions have submitted their signed merger agreement to the Division for filing with the Secretary of State. In the future, credit unions may merge their books no sooner than the legal effective date of the merger.

NOTICE TO CREDITORS
NOTICE OF MERGER FOR
ABC CREDIT UNION

ABC Credit Union is merging into XYZ Credit Union. Any creditor of ABC Credit Union must notify XYZ Credit Union of its claim. Notice shall be in writing and shall state the name and address of the creditor, the amount of the claim, and the circumstances under which the claim arose. The notice shall be sent to the following address:

XYZ Credit Union
123 Center Street
Bellingham, Washington 99000

Any claim not so made within 30 days of the last date of publication of this notice may be barred and the debt extinguished under R. C. W. 31.12.695.

Dated this _____ day of _____ 19____

AFFIDAVIT OF PUBLICATION

IN THE MATTER NOTICE OF PUBLICATION

Notice to Creditors NOTICE OF

3-15-129

STATE OF WASHINGTON }
COUNTY OF COWLITZ } ss.

CAROL MACIELEWICZ

being duly sworn says

that he/she is the CHIEF CLERK of the

THE DAILY NEWS

And that The Daily News, published in Cowlitz County, has been approved as a Legal Newspaper by order of the Superior Court of the State of Washington of Cowlitz County, and a NOTICE Assessed printed copy is a true copy of the

in the above entitled matter as it was printed in the regular entire issue of said paper for a period of THREE INSERTIONS

commencing on the 06 day of FEBRUARY, 19 97 and ending on the 20 day of FEBRUARY, 19 97, and that said newspaper was regularly distributed to its subscribers during all of said period, and that said NOTICE

was published in said newspaper and not in a supplement form. That the full amount of the fee charged for said foregoing publication is the sum of \$ 57.25 which amount has been paid in full at the rate of \$ 0.10 per inch for the first insertion and \$ 7.36 per inch for each subsequent insertion.

Carol Macielewicz

Subscribed and sworn to before me this 21 day of FEBRUARY, 19 97

MAURENA WHITRIGHT



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word.